

INTERIM REGULATIONS ON RECRUITMENT, RELOCATION, AND RETENTION INCENTIVES

Effective Date - The Federal Workforce Flexibility Act provisions on recruitment, relocation, or retention incentives were effective on May 1, 2005. However, since OPM's interim guidance was issued on May 13, 2005 (the last Friday of pay period 09) and new recruitment, relocation, or retention incentives must begin on the first day of a pay period, services agreements for the 3Rs may not be made any earlier than May 15, 2005 (pay period 10).

Payments Offered Before May 1, 2005 - If an individual received a formal offer of a new recruitment or relocation bonus or retention allowance before May 1, 2005, the bonus/allowance may be paid on or after May 1, 2005, as long as the terms associated with the offer were consistent with the regulations governing the 3Rs in effect when the offer was made. If an individual received an offer after April 30, but before May 13, 2005 (effective date of the interim regulations), the offer may be deemed to have been made on May 13, 2005, and payments may be made effective on May 15, 2005, using the interim regulations.

Payments Authorized Before May 1, 2005 - Recruitment and relocation bonus service agreements authorized under 5 U.S.C. 5753 and 5 CFR part 575, subparts A and B, before May 1, 2005, will continue until their expiration, subject to the applicable law and regulations for these bonuses before May 1, 2005. Retention allowances authorized under 5 U.S.C. 5754 and 5 CFR part 575, subpart C, before May 1, 2005, must continue until the retention allowance is reauthorized or terminated, but not later than April 30, 2006, subject to the law and regulations applicable to retention allowances before May 1, 2005.

Employee Coverage and Exclusions - Under the interim regulations, the 3 Rs apply to the same categories of employees covered by the former authorities, including employees in:

- the General Schedule (GS);
- the Senior Executive Service (SES);
- the Executive Schedule (EX);
- Senior-level (SL) and scientific or professional (ST) positions;
- Prevailing rate (i.e., Wage Grade) positions; and
- Law enforcement officers.

Single-agency categories of employees that were previously approved for coverage under the former 3R authorities are also covered under the new incentive authorities, unless excepted by the agency head or excluded by the new law or interim regulations. Commerce single-agency categories are the National Oceanic and Atmospheric and Administration's Wage Marine employees and Census AD and GG employees.

The interim regulations prohibit group retention incentives to employees in the SES, EX, and SL/ST. Further, the following employees are **explicitly excluded** from receiving any of the 3Rs: (1) appointed by the President, (2) in noncareer Senior Executive Service positions (as defined in 5 U.S.C. 3132(a)), (3) in Schedule C positions, and (4) designated as the head of an agency (or those with the expectation of receiving an appointment as the head of an agency). (Note that this is a change from current Departmental policy which previously allowed these employees to receive the initiatives.)

Approvals - As with current Departmental policy, each 3R incentive must be reviewed and approved by an agency official at least one level higher than the official who made the original determination. If there is no official at a higher level in the operating unit than the official who made the initial determination, then the CFO/ASA is the approving official. In those cases in which the CFO/ASA made the initial determination, the Deputy Secretary is the approving official.

The Director, OPM, is the approving authority for group retention incentives in excess of 10 percent, but not to exceed 50 percent of an employee's rate of basic pay, upon request by the Secretary and based on an agency's critical need. (Note that this is a change from current Departmental policy which limits group retention allowances to 25 percent.)

Payment Considerations - An employee's special rate of pay or locality rate must be used to compute a recruitment, relocation, or retention incentive. The total amount of an incentive payment may not exceed 25 percent of employee's annual rate of basic pay (including locality pay) in effect at the beginning of the service period multiplied by the number of years in the service period (not to exceed 4 years). The total amount of group incentive payments of up to 50 percent of basic pay (including locality pay) times the years in the service period may not exceed 100 percent of employee's annual rate of basic pay (including locality pay). Incentive payments are subject to the aggregate pay limitation and are not considered a part of basic pay.

As with current Departmental policy an employee must have rating of at least fully successful or equivalent to receive a relocation incentive. The interim regulations also require this level of performance for an employee to receive a retention incentive.

The interim guidance for recruitment incentives is expanded to provide additional payment methods, including (1) initial lump-sum payment at the start of the service period (in current Departmental policy), (2) in installments during the length of the service period, (3) as a final lump sum payment at the end of the service period, or (4) in a combination of methods. Recruitment incentives may not be paid in advance of fulfilling a service agreement.

Service Agreements - Under the interim regulations, employees must sign a service agreement before receiving one of the 3R incentives. (Note that this is a change from current Departmental policy that does not require a service agreement for retention incentives.) The service agreements must specify the length of the service agreement, the service period, the amount and timing of the payment, terminating conditions, and employer/employee obligations if the agreement is terminated. The only exception where a service agreement is not required is when a retention incentive is paid in equal biweekly installments. The interim regulations provide agencies with the authority to delay the service period start dates for recruitment and relocation incentives until after the employee has completed the probationary period or the initial period of formal training, as applicable. OPM's interim guidance also clarifies the required service periods for each of the incentives as follows:

- Recruitment Incentive - minimum of 6 months to maximum of 4 years;
- Relocation Incentive - no minimum to maximum of 4 years; and
- Retention Incentive - no minimum or maximum service period.

The service agreement in the Department's current policy may be modified for use to meet this requirement until the final regulations are issued (see the Department's General Pay Manual for a sample agreement at: <http://ohrm.os.doc.gov>).

Interagency Movements - OPM and the Chief Human Capital Officers Council (CHCO) have agreed to withhold the authority granted under the interim regulations which would permit agencies to authorize recruitment and retention incentives to (1) recruit employees to move from other agencies, or (2) retain current employees offered positions in other agencies. OPM and the CHCO recognize the potential for costly and counterproductive interagency competition if agencies are permitted to authorize recruitment and retention incentives in these situations. Thus, prior to authorizing this provision of the interim regulation OPM and the CHCOs are requesting agency comments on whether agencies should be permitted to make these payments, and if so, the specific circumstances in which such incentives should be authorized.

Relocation Incentives - The interim guidance allows for payment of relocation incentives for current employees who must relocate to accept a position in a different geographic area when the position would be difficult to fill in the absence of an incentive. This applies to employees who accept positions in the same or a different agency. A different geographic area is considered one where the (1) worksite of the new position is 50 miles or more from the worksite of the position held before the move, or (2) worksite of the new position is less than 50 miles from the worksite of the position held before the move, but the employee must relocate to accept the position. If the later condition applies, a waiver of the 50-mile requirement must be made. As with current Departmental policy, employees must establish residence in the new geographic area prior to payment of the incentive.

Reporting Requirements - The interim regulations require OPM to report to Congress on the operation of the new incentive authorities for each of the first five years the new authorities are in effect (i.e., 2005 through 2009). The report will require a description of how the new initiative authorities have been used, and the number and dollar amount of incentives paid (by series and grade) during the previous calendar year. OPM will issue additional guidance on reporting information at a later date.

Additional Guidance - OPM has revised fact sheets and examples of calculating recruitment, relocation, and retention incentive payments to assist agencies in administering the incentives. The fact sheets and pay examples are available at: <http://www.opm.gov/oca/pay/>.